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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:
Martin Brady

Serial No.: 09/228,109

Filed: January 11, 1999

Examiner: Douglas D. Watts

Docket No.: 0166

Art Unit: 3724

For: HOUSEHOLD KITCHEN OPENING APPLIANCE

Appeal No. 2001-1477

Assistant Commissioner for Patents
Washington, D. C. 20231

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By MARILYN GIBAS
Marilyn Gibas
Date June 7, 2002

REQUEST FOR RECONSIDERATION

By a Decision on Appeal dated May 20, 2002, this Board
reversed the action of the examiner finally rejecting claims 10
through 14. Appellant now requests that the Board's opinion be
modified by retracting Footnote 1 which appears on page 3 of the
Decision.

Comments in Support of Request

Counsel for appellant is naturally pleased with the Board's
Decision of May 20, 2002, but now requests removal of Footnote 1,
which reads as follows:

¹ Claims 11 and 13 contain an error, in that,
consistent with appellant's disclosure, the sheath is a

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more specific recitation of the scissors holder, not a distinct element in addition to the scissors holder. Therefore, claims 11 and 13 should be amended to change "further" to --, the scissors holder--.

Claims 11 and 13 depend upon independent claim 10. The sheath recited in claims 11 and 13 functions as a partial housing for a scissors when the scissors is retained by the scissors holder.

Albeit the scissors holder is supported by the sheath and the scissor's holder could have been disclosed as including the sheath. However, the sheath has not been described as part of the scissors holder and counsel considers the sheath to be in the nature of a housing in which the scissors holder is housed.

This application has consistently referred to the sheath as one element and the scissors holder as a separate element. This is true of the specification, the originally-filed claims, the previously allowed claims and Appellant's Brief. For example, following is a copy of the paragraph starting at the middle of page 2 of Appellant's Brief:

Referring to FIGS. 3 and 6, the appliance 10 has a downwardly-open, vertically-extending, scissors-receiving sheath, generally designated 50, for a

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scissors, such as scissors 52. (Page 5, lines 14-18) The sheath 50 is formed by the rear wall 23B of the housing 16 and a cover member 54 connected to the rear wall 23 by screws 56. (Page 5, lines 18-20) A scissors holder or clamp 58 comprising a pair of cooperating spring metal clamp members 60 and 62, mounted by screws 64 respectively on the housing rear wall 23B and the cover member 54, releasably retain the scissors 52 within the sheath 50 when the scissors 52 are inserted upwardly from below the appliance 10. (Page 5, line 20 to Page 6, line 1.

It is evident from the foregoing that the sheath has not been disclosed as part of the scissors holder and that Footnote 1 is inaccurate and should be retracted. Applicant should be permitted to use his own language (see 608.01(g) MPEP) and maintain consistency of disclosure. Assent to Footnote 1 would create an inconsistency which counsel wishes to avoid.

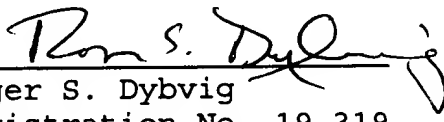
Counsel observes that 37 CFR 196 does not clearly cover the present circumstance. Counsel informally discussed this situation with Mr. Dale Shaw of the Board of Patent Appeals and Interferences who suggested the filing of this Request as one

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option available to applicant.

A favorable decision is requested.

Respectfully submitted,


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